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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ROBERT BURRELL RICO, JR., Petitioner.	2 CA-CR 2009-0230-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20034097

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines
Tucson
Attorneys for Respondent

Robert B. Rico, Jr.
Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 In this delayed petition for review, Robert Rico, Jr., challenges the trial court's denial of his petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. In the petition that he filed below, Rico claimed his guilty pleas were not knowing, intelligent, and voluntary because he was not mentally competent when he entered the pleas in August 2004. We will not disturb the court's ruling unless it has clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Rico was indicted in December 2003 on fourteen felony counts: two counts of sexual assault; one count each of kidnapping, armed robbery, and criminal damage; and nine counts of aggravated assault. On the afternoon of the second day of a jury trial, after the victim named in all but one of the counts had begun her testimony, Rico accepted the state's offer to plead guilty to two of the charges—one count of sexual assault and one count of aggravated assault—in return for dismissal of the other twelve counts. He was eventually sentenced to consecutive, aggravated prison terms totaling twenty-nine years.

¶3 On August 12, 2004, five days before trial commenced on August 17, Rico's counsel filed a motion for a continuance of the trial. Counsel stated in the motion that he had first learned from Rico on August 10 that Rico had previously been diagnosed as schizophrenic and had been hospitalized "at least three times in California" and more than once at Kino Community Hospital in Tucson due to his schizophrenia. Counsel

sought additional time to obtain and review the records of those hospitalizations, although he also stated he had "represented Mr. Rico for more than eight months and ha[d] never had reason to doubt his competency to stand trial. In fact," he wrote, "defense counsel does not believe that Mr. Rico is incompetent to stand trial at the present time." The trial court denied the motion without prejudice, stating its willingness to consider any additional information counsel might thereafter acquire.

¶4 Following the noon recess on the second day of trial, the parties announced that Rico wished to accept a plea agreement the state had offered. In the process of establishing that Rico's decision to plead guilty was knowing, informed, and voluntary, the court asked if Rico felt he was "of sound, mental ground [sic] [and able] to make th[e] decision" to enter guilty pleas, to which Rico responded, "Yes, Your Honor." Defense counsel added, "I concur with that as well, Your Honor. After representing him [for] eight months, I believe he's competent. I always have." After a factual basis for both charges had been established, the court accepted Rico's pleas, discharged the jury, and scheduled sentencing for October 4, 2004.

¶5 Five days before the scheduled sentencing hearing, Rico moved for a competency examination pursuant to Rule 11.2, Ariz. R. Crim. P. The trial court granted the motion and later appointed Thomas Fisher, Ph.D., and Raul Rodrigues Sora, M.D., to evaluate Rico. The parties ultimately stipulated to forego a competency hearing and allow the court to determine Rico's competency based on the written reports of the

evaluators. In January 2005, the court ruled Rico competent to proceed, writing in its minute entry:

> The reports speak for themselves. However, to briefly summarize, Dr. Sora is unequivocal in expressing his opinion that the Defendant is competent and that any irregularities in his performance on any psychological testing or the content of his clinical interview [are] clearly related to his malingering. Dr. Fisher's report is somewhat equivocal. While he acknowledges that the Defendant did exhibit behaviors consistent with malingering on certain tests, he was ultimately less than certain as to his ultimate conclusion. Dr. Fisher suggested that the Defendant "could be considered" for "possible placement in the ASH Competency Retraining Program[."]
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> Ultimately, given the fact that both professionals concluded that the Defendant was malingering to one extent or another, given the fact that Dr. Sora's report is unequivocal and in light of the Court's opinion that Dr. Fisher's report was given with some reservation as to the Defendant's actual competence [sic], the Court concludes that the Defendant is in fact competent.

Rico was then sentenced on January 14, 2005.

¶6 Rico filed a timely notice of post-conviction relief in February 2005. Appointed counsel subsequently filed a petition for post-conviction relief in which counsel asserted that various medications administered to Rico at the Pima County jail had rendered him unable to understand the consequences of his guilty pleas. He maintained "he accepted the plea [agreement] because his attorney persistently urged him to and because he had no idea what was going on." In support of his petition, he attached medical records, his own affidavit, and a September 2005 letter from a pharmacology

professor, Dr. Edward French. In his letter French stated that, "with a focus on [the effects of the drugs] Seroquel, Prozac and Cogentin," he had concluded that "Mr. Rico's abilities to concentrate and effectively participate in his plea agreement proceedings could have been negatively influenced by his medications."

¶7 As authorized by Rule 32.6(c), the trial court denied relief without an evidentiary hearing but explained its reasoning in a detailed minute entry. Among the considerations the court cited in denying relief were its extensive colloquy with, and personal observations of, Rico before accepting his guilty pleas; defense counsel's belief that Rico had been competent, both when he entered his pleas and at sentencing; the lack of any documentary support for Rico's claim that he had taken any medications on the day of his plea or that they had actually affected his competency to plead guilty; the fact that he had provided only a letter, not an affidavit, from Dr. French; and the fact that the contents of French's letter were theoretical, not specific to Rico, and not persuasive. In short, the court found, Rico had presented "nothing more than speculation regarding some possible, unusual effects of medications . . . [that he had] not shown that he was even taking . . . at the time of the change of plea."

¶8 Rico apparently first attempted to file a petition for review in 2006. After the trial court found in 2008 and again in 2009 that a series of "administrative errors" and "clerical oversights" had impeded Rico's attempts to petition this court for review, in June 2009 it granted him leave to file the present delayed petition.

¶9 Rico's contentions in his petition for review are predominantly factual. He re-urges the arguments he presented below, essentially asking this court to reweigh the factual and documentary evidence before the lower court and to reach a different decision about his competency in 2004. But this is not our function on review. *See generally State v. Gallegos*, 27 Ariz. App. 538, 538, 556 P.2d 1141, 1141 (1976) ("[I]t is not the function of the reviewing court to weigh the evidence and decide whether it would reach the same conclusion as the trier of fact."). Because "competency to stand trial is essentially a factual question to be decided on a case by case basis," our role is only to ascertain "whether the trial court's finding is supported by reasonable evidence." *State v. Ferguson*, 26 Ariz. App. 285, 286, 547 P.2d 1085, 1086 (1976). And we review the trial court's determination deferentially "[b]ecause [it] is most familiar with the defendant and the proceedings below." *State v. Krum*, 183 Ariz. 288, 293, 903 P.2d 596, 601 (1995).

¶10 Rico has failed to demonstrate that the trial court abused its discretion, either in determining that he had been mentally competent to plead guilty in 2004 or in denying post-conviction relief on the same ground in 2005. Because the record supports the court's findings, they are not clearly erroneous. *See Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948. And, because we are satisfied with the court's identification, analysis, and resolution of Rico's post-conviction claims and find no abuse of its discretion, we adopt its ruling without further elaboration. *See generally State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised

"in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court['s] rehashing the trial court's correct ruling in a written decision").

¶11 Based on the foregoing, we grant the petition for review but deny relief.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

PETER J. ECKERSTROM, Judge